



Legislative Research Council

MINUTES

Agricultural Land Assessment Implementation and Oversight Advisory Task Force

Senator Larry Rhoden, Chair
Representative Justin Cronin, Vice Chair

Second Meeting
2013 Interim
July 25, 2013

Room 413
State Capitol
Pierre, South Dakota

Thursday, July 25, 2013

Senator Larry Rhoden called to order the second 2013 interim meeting of the Legislative Research Council Agricultural Land Assessment Implementation and Oversight Advisory Task Force at 10:00 a.m. (CT), July 25, 2013, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Larry Rhoden, Chair, Jason Frerichs, Al Novstrup, and Billie Sutton; Representatives Julie Bartling, Mark Mickelson (via telephone), and Jim Peterson; Walt Bones, Kirk Chaffee, Paul Dennert, Curt Everson, Tom Hansen, and Lyle Perman. Excused: Representative Justin Cronin, Vice Chair.

Staff members present included Fred Baatz, Principal Research Analyst; Jim Fry, Director; and Cindy Tryon, Legislative Secretary.

(Note: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all reference documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.state.sd.us> under "Interim Information – Current Interim – Minutes and Agendas.")

Approval of Minutes

MR. BONES MOVED, SECONDED BY REPRESENTATIVE BARTLING TO APPROVE THE MINUTES OF THE JUNE 12, 2013 MEETING. The motion prevailed unanimously on a voice vote.

Opening Remarks

Senator Rhoden welcomed everyone to the task force meeting. Senator Rhoden said that this task force was established to oversee the transition from using market value to using productivity value when determining the property tax assessment on agricultural land in South Dakota.

Mr. Paul Dennert said that during the June task force meeting, Mr. Jim Terwilliger from the Bureau of Finance and Management gave a presentation on the funding formula for education. Mr. Dennert said that while giving that presentation, Mr. Terwilliger used an estimated number rather than the actual number. Mr. Dennert wants to make sure that people understand that ag land property taxes increase every year and the amount apportioned to education goes up every year. He added that fact was not evident in Mr. Terwilliger's presentation.

Representative Jim Peterson distributed information showing property taxes paid in the Grant-Deuel and the Deuel school districts for the fiscal years 2010 thru 2012 (**document #1**). Representative

Peterson said that this document illustrates Mr. Dennert's point that ag land property taxes continue to increase. Representative Peterson said that there is a lot of misinformation out there regarding ag land valuations and taxes paid and it is time to make the public aware.

Response to Task Force Requests

Mr. Michael Houdyshell, Director of Property and Special Taxes, SD Department of Revenue, distributed information regarding requests made by task force members at the June task force meeting **(document #2)**.

In response to a request from Senator Novstrup, Mr. Houdyshell distributed the report showing the median ratio of agricultural land sales and number of "good" sales by county **(document #3)**. Mr. Houdyshell said that it is important to remember not all counties were at the same starting point when this program began and that the productivity value does not reflect the market value when examining this data.

In response to a request from Mr. Perman, Mr. Houdyshell distributed a document showing South Dakota property taxes paid as a percentage of income with farm earnings vs. nonfarm earnings **(document #4)**. **Mr. Lyle Perman** asked if there is a way to compare crop and non-crop values. Mr. Houdyshell said that he is not aware of any way to accumulate that data.

In response to a question, Mr. Houdyshell said that the cost approach, market approach, and income approach are all ways to determine assessed value of property. Mr. Houdyshell said the centrally assessed process is heavily reliant on the income approach. He said that the company's value on a whole will be different than the company's value in South Dakota.

Mr. Tom Hansen asked if the ag sector pays more or less property taxes in relation to income compared to railroads or commercial property. Mr. Houdyshell said that he is not sure but the percentage for ag is probably higher because of what a farmer/rancher has tied up in land and other real property compared to a commercial business.

Senator Rhoden pointed out that it is difficult to do such comparisons because of all the differences between the different classifications, which is exactly why there are the different classifications for property tax assessment.

In response to a request from Representative Peterson, Mr. Houdyshell distributed a report showing total taxes levied for school purposes for taxes paid years 2003 through 2012 **(document #5)**. The report is broken down by the amount of school taxes levied on each property classification.

In response to a request from Senator Rhoden, Mr. Houdyshell distributed a chart showing property taxes payable for years 1998 through 2012 broken down by the property tax classes **(document #6)**. Taxes payable in 2012 totaled \$1,031,533,239 statewide: agricultural class paid \$252,715,223 or 24.5%; owner-occupied class paid \$414,066,249 or 40.14%; other, which includes the commercial class, paid \$321,656,276 or 31.18%; and, utilities/special assessments made up the remaining 4.18%.

In response to a request from Representative Cronin, Mr. Houdyshell distributed the Soil Survey Table Data update **(document #7)**.

In response to a request from Senator Novstrup, Mr. Houdyshell distributed two South Dakota maps showing a county-by-county breakdown of equalized unlimited crop and non-crop productivity dollar per acre value **(document #8)**.

In response to a request from Representative Peterson, Mr. Houdyshell distributed a document titled *"Explanation of Capital Outlay and Pension Levy Limitations"* which also included the applicable statutes (**document #9**). Mr. Houdyshell said that the Department of Revenue will be sending letters to all school districts reminding them of the limitations, especially the 10% limitation, regarding valuations on real property within the school district and taxes may be levied.

Ag Land Assessment – Report on the 2014 Assessment Information

Ms. Colleen Skinner, Property Tax Program Manager, SD Department of Revenue, presented information regarding the 2014 Assessment Report (**document #10**).

Ms. Skinner distributed a memo that was sent to the Directors of Equalization with the 2014 Productivity Assessment Information. This memo explains how the Directors should make adjustments (**document #11**).

Ms. Skinner distributed the National Agricultural Statistic Services (NASS) Rental Report from September 2012 (**document #12**). The values in the report are county level estimates of average cash rents paid on agricultural land in South Dakota.

Ms. Skinner distributed the 2014 Assessment Year Productivity Information for crop olympic averages and non-crop olympic averages (**document #13**). Statewide, the crop olympic average increased 13.59% this year and the non-crop olympic average increased 1.49%.

Ms. Skinner distributed the 2014 Assessment Year Productivity Information for commodity prices (**document #14**). This report lists the prices used in calculating revenues from commodities for the years 2000 through 2012.

Ms. Skinner distributed the 2014 County Weighted Ratings chart (**document #15**). This is the 2014 county acres and weighted ratings for crop acres, non-crop acres, and total acres according to the Department of Revenue.

Ms. Skinner presented the 2014 Assessment Year Productivity Information for the change in valuation (**document #16**). This report illustrates the changes that occurred in valuations from the year 2013 to the year 2014. Ms. Skinner pointed out that there are five counties that are unlimited regarding their change in valuation and those are Hutchinson, Lincoln, Stanley, Union, and Yankton Counties.

Mr. Perman said that there are five counties that are unlimited and use full productivity. He asked if that number will continue to improve and Ms. Skinner said that it will continue to improve. Senator Rhoden said that if things stay on course, the majority of counties should be unlimited within three years and Ms. Skinner said that she agrees with that statement.

Dr. Burton Pflueger, South Dakota State University, Brookings, gave a PowerPoint presentation *"Changes in Land Values 2011-2012"* (**document #17**).

Mr. Perman asked if land is rented and then it is too dry to run livestock on that land, is the acreage considered when determining value. Dr. Pflueger said that the value is based on the landowner's rental income not on the use of the land.

Senator Rhoden said that land in summer fallow takes two years to grow one crop. He said that this is an anomaly and a problem that needs to be addressed. Dr. Pflueger said that he does not believe there is enough acreage of summer fallow to influence the value of each acre. Senator Rhoden said

that he would like to see some type of recommendation on how to address the summer fallow issue by the next task force meeting.

There were several questions from task force members regarding how the National Agricultural Statistics Service (NASS) accumulate data and Dr. Pflueger suggested that those questions would better be answered by a representative from NASS at a future meeting.

Task Force Discussion

Mr. Kirk Chaffee said that he would like to have the terms “highest and best use” and “actual use” as they apply to determining property taxes defined in statute. He would also like to have information on how assessors determine adjustments archived from year to year.

Senator Rhoden referred to a task force meeting held on August 25, 2010, at which Carter Anderson with NASS explained to the task force how NASS compiles data. At that meeting, Mr. Anderson said NASS uses the following methods to collect statistics:

- Producer surveys from farmers and ranchers – data is collected via mail, phone interview, personal field interview and/or computer aided interview;
- Objective yield surveys – monthly tracking of biological yield for selected corn and soybean fields plots;
- Satellite data – produced by using FSA data as ground truth to train satellite with an accuracy of about 95% in the corn belt; and
- Administrative farm program data.

Representative Peterson said that NASS has the ability to check yields using satellites. He said testing has been done and the results are quite accurate.

Senator Al Novstrup said that he would like information on whether there has been a shift between grassland and cropland assessment values. Senator Rhoden said that there has been a shift. Mr. Dennert said that it used to be 85% cropland – 15% grassland and now it is 90% cropland – 10% grassland. Mr. Dennert added that he believes that shift will continue.

Public Testimony

Mr. Robert Heidgerken, Sturgis, stated that he is a Meade County Commissioner. Mr. Heidgerken has an appeal filed with Meade County regarding the soil types applied to his ag land. Mr. Heidgerken said he hired an expert to evaluate the soil and that expert said the soil types applied were incorrect. Mr. Heidgerken asked how these soil types may be adjusted when found to be incorrect. Mr. Houdyshell said that there is some potential for adjustment and that there should be some type of corrective action that can take place. Mr. Houdyshell said that many of the soil surveys were done at different times and that may be part of the problem.

Mr. Curt Everson asked Mr. Heidgerken how much difference in the soils did the expert find. Mr. Heidgerken said that it is hard to determine because the ratings are different in each county, but in some cases it changed the land from being considered crop land to being non-crop land.

Mr. Houdyshell said that if there are concerns, the Department of Revenue may need to hire a soil scientist to look at the ratings in the problem areas. Mr. Chaffee asked if there is money in the budget to take that step. Mr. Chaffee added that he was surprised at how accurate the majority of soil surveys are when evaluated.

Mr. Everson asked if Natural Resources Conservation Service (NRCS) or the Department of Revenue owns the soil survey data and who has the right to modify or correct that data. Senator Rhoden said that it is important that the Department of Revenue have the ability to correct such inaccuracies when they are found. Senator Rhoden said that the task force will invite an expert in mapping soils to the next meeting.

Representative Mark Mickelson asked how big an impact changing soil types would have. Senator Rhoden said that this may have a big impact on an individual producer.

Mr. Rick Vallery, Pierre, said that NRCS is currently working on addressing these issues. He also responded to an earlier question by saying that the USDA census is mandatory and reporting to NASS is voluntary. Mr. Vallery said that NASS does not collect data on summer fallow, but the USDA census categorizes it as idle land and, in 2007, 4% of the total crop land was considered idle land. Mr. Vallery added that idle land is not necessarily fallow land but there are not a lot of acres in South Dakota that go to summer fallow. Mr. Vallery continued by pointing out that cropping or summer fallowing is a management decision and there are plenty of crops that can be planted on an annual basis. Mr. Vallery said that summer fallow should not change the value of the land, as putting land to fallow is the landowner's choice.

Ms. Carol Olsen, SD Property Taxpayers Coalition, Rapid City, said that she owns 110 acres of ranch land in the Black Hills. Ms. Olsen said that she and several representatives from the coalition attended the meeting to raise the awareness of what is happening to ag land owners in Pennington County.

Ms. Brenda Whiting, SD Property Taxpayers Coalition, Rapid City, distributed a list of questions the coalition sent to the Pennington County Commission (**document #18**) and the 2009 Land Use and Planning Report prepared by the Colorado State University (**document #19**). Ms. Whiting said that in May of 2013 the Pennington County Commission changed the criteria for the ag class designation from 40 acres to 160 acres.

Ms. Whiting said that 3.6% of the land in Pennington County and 349 landowners were affected. Ms. Whiting said that this change affects over 50% of the owners previously classified as ag land in Pennington County. She added that some of this land has been part of family homesteads for generations. She said that some landowners are on social security and cannot afford higher taxes resulting from the change in property classification.

Mr. Leo Hamm, Rapid City, said that he is a landowner in Pennington County and was a Pennington County Commissioner in the 1980s. Mr. Hamm distributed two undated documents; a letter he wrote to the editor of the Rapid City Journal (**document #20**) in response to an editorial from the Rapid City Journal (**document #21**). Mr. Hamm said that he would like to see the classifications for property tax purposes be developed land and undeveloped land rather than nonag land and ag land.

Mr. Hamm said that undeveloped lands do not get county services and that is the purpose of classifying land for tax purposes. Mr. Hamm said that they do not have the option of pasture or crop land in Pennington County. He added that there is not enough income in that area to withstand the higher rate of taxation. Mr. Hamm said that this change affects 35,000 acres of land in Pennington County.

Senator Rhoden distributed a copy of HB 1009 which was introduced during the 2006 Legislative Session (**document #22**). The bill did not pass but the Senator wanted the task force to see another option available for consideration regarding land classifications.

Mr. Adam Ehlers, Presho, said that he is a farmer and County Commissioner in Lyman County and also owns 44 acres in Pennington County. His land in Pennington County is fenced, but because he is not there to check the fence, the county would not classify the land as ag land. Mr. Ehlers said that the requirements for ag land classification are too vague and he distributed a copy of SDCL 10-6-31.3 (**document #23**). Mr. Ehlers went on to say that County Commissioners should not be considered experts on land classification but that should be up to the Director of Equalization. Mr. Ehlers said that the Director of Equalization in Pennington County would like to have timber removed as one of the uses for ag land classification.

Mr. Ken Davis, Pennington County Commissioner, said that he agrees with Mrs. Olsen's testimony and he would like to see changes made to the requirements for ag land classification. Mr. Davis said that there is an issue with the use of contiguous lands as a determining factor of ag use classification. Mr. Davis also said that federal grazing permits also need to be looked at. Mr. Davis said that he has a problem with the timber use – does cutting 20 trees every few years qualify it as timber land? Mr. Davis said that he is willing to work with the Task Force in addressing these issues.

Mr. Jeff Albrecht, Doland, said that actual use of land should be used when classifying land for tax purposes. Mr. Albrecht said that crops are being planted on land classified as non-crop land. Mr. Albrecht said that landowners should decide how to use their land and the land should be taxed accordingly. He said that a system similar to building permits could be used and the landowner could file a land use claim to receive a use permit. Mr. Albrecht added that this system could also help solve the grass easement problems that exist today.

After seeing that there was no more public testimony, Senator Rhoden addressed those who spoke about the property tax issues in Pennington County. Senator Rhoden said that most people want local control when it comes to property taxes and that the law was written to leave as much latitude as possible for the application of common sense by local governments. Senator Rhoden said that it is not up to this task force to determine who is right or wrong in this situation but that the disagreement would best be settled at the local level.

Task Force Discussion and Staff Directives

Senator Jason Frerichs thanked the Department of Revenue for their thorough answers to task force members' questions. Senator Frerichs said that the more information they receive the better prepared they are both during session and in preparation for session.

Representative Peterson said that it may be time to look at putting the three property tax classifications back into the mix for tax levies for the general fund of school districts. He said that when the productivity system was enacted, some thought assessments on ag land would remain relatively flat but instead assessments and taxes have increased each year on ag land. He suggested that the three property classifications be linked together for the purpose of setting the school district general fund levies.

Senator Rhoden said that he would need to see more data that would support returning to the previous method of setting the school district general fund levies.

Mr. Dennert said that they need to look at the numbers from before the levies segregated and compare them to today's numbers. Mr. Dennert said that even though his levy rates went down, his property taxes increased.

Mr. Walt Bones said that he was a member of this task force when it began and that they have talked at great length about productivity and actual use. He said that maybe it is time to review highest and best use and rehash some of the discussion they had years ago regarding this issue.

Mr. Dennert said that actual use would take away the issues they now face regarding grassland easements.

Senator Rhoden pointed out that legislation just passed during the 2013 session which may address some of these issues. However, it just went into effect July 1 and they should give it some time before making further changes.

Mr. Perman asked if anyone tracks adjustments that are made on a state level or is that information kept in the county. Mr. Perman said that these adjustments are not applied equally throughout South Dakota. He said that he would like to see all the adjustments that are made.

Senator Rhoden asked the Department of Revenue to provide information regarding adjustments and how they affect the target number for the county.

Mr. Hansen asked when crop land may become non-crop land. He said that if a building is demolished, that removes a component to that valuation and he would like to know who keeps record of those changes to the property.

Mr. Hansen also asked about new growth regarding property taxes. He said that he knows there is no new growth on the ag side but would like to see the numbers showing new growth in the other classifications. He said that it is part of this task force's role to communicate that type of information.

Mr. Fred Baatz, LRC Principal Research Analyst and task force staffer, said that he will be drafting some clean up legislation for the task force to consider at the next meeting.

Mr. Dennert said that he would like to have Green Acres added to the next meeting agenda and perhaps some legislation could come out of that discussion.

Next Meeting Date

The next Agricultural Land and Assessment Implementation and Oversight Advisory Task Force meeting will be October 29, 2013, in room 413 of the Capitol in Pierre.

Adjournment

SENATOR FRERICHS MOVED, SECONDED BY MR. PERMAN, TO ADJOURN. The motion prevailed unanimously on a voice vote.

The meeting adjourned at 3:15 p.m.



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